

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

PROFESSIONAL FIREFIGHTERS)	Case No. 8:10-cv-198
ASSOCIATION OF OMAHA, LOCAL 385, et)	
al.,)	
)	
Plaintiffs,)	
)	
RICK BERGHOLZ, et al.,)	ORDER
)	
Intervenor Plaintiffs,)	
)	
v.)	
)	
CITY OF OMAHA, NEBRASKA, et al.,)	
)	
Defendants.)	

Before the Court is Plaintiffs' prayer for certification of a collective action, pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs have set forth in their Complaint that pursuant to Rule 23, class certification is appropriate and the Court hereby finds that class certification is appropriate pursuant to Rule 23(a) of the Federal Rules of Civil Procedure and hereby certifies a class as set forth below on the matters raised in Plaintiffs' declaratory judgment action. The Court also has found the class, as set forth herein, to be appropriate under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

CLASS DEFINITION

The class proposed by the Plaintiffs is defined as follows:

(1) All former employees of the City of Omaha, Nebraska who separated from employment for whatever reason and have entitlement to and were receiving group health care coverage as retirees of the City of Omaha as of May 18, 2010.

(2) All individuals who have received group health coverage benefits from the City of

Omaha because they were, or will be “covered dependents” or spouses or survivors of individuals described in paragraph (1) above; and

(3) All individuals who, as of May 18, 2010, were employed and maintain employment in positions within the City of Omaha covered by collective bargaining agreements and/or ordinances which provide for entitlements to group health benefits coverage at the time of retirement or separation of employment from the City of Omaha.

Plaintiffs propose the following subclasses to aid in management of the case, and the Court finds that such subclass definitions are appropriate and hereby orders the following subclasses of Plaintiffs:

(a) Firefighter Retiree Class

This class is composed of all City of Omaha employees who separated employment from the City of Omaha while employed in a position covered by the applicable collective bargaining agreement between the City of Omaha and the Professional Fire Fighters Association of Omaha, Local 385, their covered dependents and survivors who are eligible for retiree group health coverage from the City of Omaha and had said eligibility on or about May 18, 2010.

(b) Police Retirees

This class is comprised of all former City of Omaha employees who retired or separated employment from the Omaha Police Department in positions covered by the bargaining unit represented by the Omaha Police Officers Association, Local 101, their covered dependents and survivors who are or were eligible for group health coverage benefits for retirees from the City of Omaha on or about May 18, 2010.

(c) Local 251 Retirees

This class is composed of all former employees of the City of Omaha who retired or separated employment from positions within the City of Omaha covered by the bargaining unit represented by the Omaha Civilian Employees Association, Local 251 and their covered dependents and/or survivors who are entitled to receive or are receiving health care coverage benefits from the City of Omaha on or about May 18, 2010.

(d) CMPTEC and Other Civilian Employees Retiree Class

This class is composed of individuals who retired or separated employment from the City of Omaha from positions within the City of Omaha covered by the bargaining unit represented by the Civilian Management Professional Technical Employee Council and their covered dependents and/or survivors, and all other retired employees of the City of Omaha who are entitled to or receiving retiree group health benefits pursuant to the ordinances of the City of Omaha in effect at the time of their retirement or separation of service up through and including May 18, 2010.

(e) Fire & Police Management Retiree Class

This class is comprised of all retired individuals who have retired or separated employment from positions within the City of Omaha covered in the Omaha Police or Fire Departments holding the rank of Assistant Chief and above in the Fire Department, and Deputy Chief and above in the Police Department, their covered dependents and/or survivors who were entitled to receive or were receiving retiree group health benefits as of May 18, 2010.

(f) Active Fire

This class is composed of all employees within the current fire bargaining unit represented by the Professional Firefighters Association of Omaha, Local 385.

(g) Active Police

This class is comprised of all current City of Omaha employees who hold positions within the City of Omaha Police Department which are positions covered by a bargaining unit represented by the Omaha Police Officers Association, Local 101.

(h) Local 251 Actives

This class is comprised of all employees of the City of Omaha who hold positions contained within a bargaining unit represented by the Omaha Civilian Employees Association, Local 251

(i) CMPTEC Actives

This class is composed of all employees of the City of Omaha who are currently employed in positions covered by the bargaining unit represented a bargaining agent known as the Civilian Management and Professional Technical Employee Council (“CMPTEC”).

(j) All other active employees currently employed by the City of Omaha who are employed in classifications covered by ordinances of the City of Omaha which provide for the provision of retiree group health coverage benefits upon retirement in effect on May 18, 2010 and thereafter.

ALLEGATIONS OF THE CLASS PLAINTIFFS

Retired Plaintiffs claim that they are entitled to group health care coverage as a retiree benefit from the City of Omaha in the same manner and form and at the same amount of employee

contributions (“premium”) as that in effect at the time they separated employment, and that the Omaha City Council’s action of May 18, 2010, in adopting Ordinance No. 38733 on May 18, 2010, violated the Plaintiffs’ rights to be free from impairment of contract, pursuant to the United States Constitution and pursuant to the Constitution of the State of Nebraska and that said action: constituted a violation of Plaintiffs’ rights to equal protection under the Constitution of the United States and under the Constitution of the State of Nebraska; constituted a violation of Plaintiffs’ rights to be free from unlawful takings, pursuant to the Fifth Amendment of the Constitution of the United States; that the City of Omaha is equitably estopped from unilaterally breaking the promises made to the class of all Plaintiffs to provide retiree group health coverage upon separation of service pursuant to the conditions of employment, and said promises made to Plaintiffs which the Plaintiffs and the class they represent have detrimentally relied upon; that the actions of the City of the Defendant in adopting Ordinance No. 38733, violated the rights of Plaintiffs as secured by Section 6.09 of the Home Rule Charter of the City of Omaha; and that the Council’s actions in adopting said ordinance violates the contractual rights of the Plaintiffs as established through their collective bargaining agreements and/or ordinances passed by the City of Omaha to give effect to the collectively bargaining agreements between the parties and their collective bargaining agents.

INTERVENORS

Rick Bergholz, Stephen Bosiljevac, Dale Gruber, Mark Lloyd and Stephen Tyler are individuals who are retired from the City of Omaha out of the Fire bargaining unit and have appeared separately in the matter as intervenors. Counsel for the intervenors is and shall remain Maynard H. Weinberg of Weinberg & Weinberg PC, 9290 W. Dodge Rd, Suite 205, Omaha, NE 68114. They have made additional and/or separate allegations as set forth in Filing No. 44. The rights of the intervenors, to the extent necessary in the judgment of the Court, shall remain independent of the rights of the class defined above.

DEFENSES

The Defendant City of Omaha and the Mayor of the City of Omaha and individual members of the City Council have denied any and all liability based on the claims of the Plaintiff's and assert to the extent the City had obligations to provide current or retired employees group health care coverage upon the separation of employment, and to the extent such obligation is protected by contract or constitution, the Defendants contend that the actions of the Defendant in adopting Ordinance No. 38733 were necessary and unavoidable as an exercise of the City of Omaha's police power, and thereby actions of the Defendants as complained of were completely lawful and that the Plaintiffs have failed to state a claim against Defendants and the Plaintiffs' claims should be dismissed.

APPOINTMENT OF CLASS COUNSEL

Michael P. Dowd, John E. Corrigan and Timothy S. Dowd of the law firm of Dowd Howard & Corrigan, LLC are adequate counsel and are appointed to represent the class of persons meeting the definition of the class members provided above. The Professional Firefighters Association of Omaha, Local 385; the Omaha Police Officers Association, Local 101; Omaha Civilian Employees Association, Local 251; the Civilian Management Professional and Technical Employees Council; Jim Andrlik, Mike Piernicky, Bill Love and Terry Leahy are adequate class representatives and are appointed to represent the class of individuals meeting the class definition.

It is further found by the Court that the requirements of Rule 23 of the Federal Rules of Civil Procedure for certification of this case as a class action have been established by the Plaintiffs, as set forth in this Court's Memorandum and Order docketed as Filing No. 56.

NOTICE

It is hereby further ordered that Plaintiffs shall mail to each class member known to Plaintiffs' counsel and/or Plaintiffs a copy of the notice that has been approved by this Court, and it is hereby further ordered that the Defendant shall be responsible for delivering, by electronic copy or hand delivery, a copy of the notice to each potential class member who is a current City of Omaha employee. A copy of said notice is attached hereto and marked as Exhibit "A".

THEREFORE, IT IS ORDERED that: this matter is certified as a class action and the classes are defined pursuant to the above definitions provided herein and that the parties shall proceed to trial as scheduled by the Court.

DATED this 16th day of July, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
United States Chief District Judge

Prepared and submitted by:

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